IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIRST DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION No: 18550 of 2004

Between:

H.Niyaz Basha S/o.Nazeer Saheb
R/o.Chinna Bazar, Tadipatri Town, Anantapur Distirct.

..... PETITIONER

AND

1 The Collector and District Magistrate o/o The District Collector Anantapur, Anantapur District.
2 The Chief Secretary Government of Andhra Pradesh Secretariat, Hyderabad.
3 The Secretary Department of General Administration, Government of A.P. Secretariat, Hyderabad.
4 The Superintendent Charlapalli Central Jail, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas Corpus under Article 226 of the Constitution of India directing the respondents to produce the detenu Sri H.Fayaz Basha, Tadipatri detained inC.No.5001-8/MC/2004, dated 17.9.2004, now lodged in Charlapalli Central Prison, Ranga Reddy District, before this Hon'ble Court and he may be released forthwith after declaring the detention as illegal and invalid and unconstitutional.

Counsel for the Petitioner: MR.M.SREERAMULU REDDY

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

ORAL ORDER: (By GB.J.)

The order of detention passed by the first respondent dated 17-9-2004 is assailed before this Court.

2. In support of the order of detention, the following grounds are mentioned:

> "1. Cr.No.147/94 u/s 324, 307 r/w 34 IPC and Sec. 3 & 5 of ES Act of Tadipatri Town PS: On 22-12-94 at 6-10 p.m. in CB road of Tadipatri Town you H. Fayaz Basha and 2 others hurles bombs on the complainant A. Sultan Mohiddin and another to kill them due to political rivalry resulting in serious injuries due to explosion on hurled bombs you surrendered in Court on 3-1-95, you were later released on bail. The case was charged and the same was acquitted by ASJ, Gooty in SC.No.29/97.
>
> 2. Cr.No.75/99 u/s 107 Cr.P.C. of Tadipatri Town PS: In view of dangerous activities and frequent involvement in criminal cases security proceedings wee initiated against you u/s 107 Cr.P.C. in the Court of Mandal Executive Magistrate, Tadipatri on 21-7-99 and you were bound over to keep good behavior for a period of one year with self surety for Rs.10,000/- vide MC No.16/99 dated 21-7-99.
>
> 3. Cr.No.186/03 u/s 323, 354 r/w 34 IPC of Tadipatri Town PS: On 23-1-03 at about 12 noon in the Main Bazar, Tadipatri you H. Fayaz Basha and 7 others abused and threatened the complainant P. Ramulamma when she went to collect rents from the occupants of her rooms and also beat an other person who was accompany in the complainant and caused injuries. In the process you miss-behaved and outraged the modesty of the complainant in order to avoid payment of room rents. The case is under investigation.
>
> 4. Cr.No.43/04 us 147, 148, 324, 307, 332, 435 r/w 149 IPC 25(1b)(a) and 27 Arms Act and Sec 3 & 5 of ES Act and Police firing of Tadipatri Town PS: On 7-4-04 at about 1-00 p.m. near CB Road, Tadipatri Town, you H. Fayaz Basha along with 60 or so group members formed into an unlawful assembly armed with deadly weapons like fire arms explosive substances, soda bottles, and

stones etc., indulged in clash with your rival group due to Political rivalry in connection with filing of nominations of APLA elections. You also set fire to a jeep and 3 motor cycles and resorted to stone pelting and on account of stone pelting 9 police personnel including the Deputy Superintendent of Police sustained injuries. The grave situation was the brought under control only after the arrival of additional forces and opening of fire by the Police to disperse the mob. You H. Fayaz Basha obtained anticipatory bail from High Court and surrendered in the Court on 24-4-04. The case is under investigation.

5. Cr.No.44/04 u/s 147, 148, 324, 307 r/w 149 IPC Sec.25(1b)(a) and 27 Arms Act and Sec. 3 & 5 of ES Act and Police firing of Tadipatri Town PS: On 7-4-04 at about 1-15 p.m. near Sub Register Office, Tadipatri Town you H. Fayaz Basha and others of your group formed into an unlawful assembly armed with fire arms and explosive substances, stones and soda bottles attacked on the lives of your rival group in connection with filing of nomination papers to the AP Legislative Assembly elections resulting in fire arm injuries and stone hit injuries to many. The police party intervened and brought the situation under control by opening fire and 9 policemen including a DSP sustained injuries during their effort to bring the situation under control. You H. Fayaz Basha obtained anticipatory bail from High Court and surrendered in the Court on 23-4-04. The case is under investigation."

3. Learned counsel appearing for the petitioner, *inter alia,* submits that the order is vitiated by referring to a stale ground which is alleged to have taken place about 10 years prior to the date of the detention order. He refers to ground No.1, which relates to offences alleged to have been committed under Section 324, 307 read with 34 I.P.C. and the same was registered as Crime No.147 of 1994. It is also now submitted that the petitioner was prosecuted and ultimately he was acquitted of the charges.

4. Be that as it may, when it is made as an independent and specific ground, we find that neither there is nexus nor proximity with the subsequent offences. Even ground No.2 also relates to Crime No.75 of 1999, which was registered under Section 107 Cr.P.C. and in this incident also there is time gap of 5 years between first incident and the second incident. The third incident refers to ground No.3, which relates to Crime No.186 of 2003 i.e., after a period of 4 years. Thus, we find that the detaining authority has considered the stale grounds, which cannot be upheld. Under those

circumstances, there is no alternative except to set aside the detention order. We also find that Chapters XVI, XVII and XXII IPC do not cover offence under Section 107 Cr.P.C. and when it is made an independent and specific ground, the same also vitiates the detention order.

5. For the foregoing reasons, the Writ Petition is allowed and the order of detention passed by the 1st respondent is set aside and the detenu shall be set at liberty forthwith, if he is not required in any other case.

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01-11-2004

ES

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this **Monday the First day of November Two thousand and Four.**

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ASSISTANT REGISTRAR

To

1 The Collector and District Magistrate o/o The District Collector Anantapur,

Anantapur District.

2 The Chief Secretary, Government of Andhra Pradesh
Secretariat, Hyderabad.

3 The Secretary, Department of General Administration,
Government of A.P. Secretariat, Hyderabad.

4 The Superintendent Charlapalli Central Jail, Hyderabad.

5. 2 CCs to the Advocate General, High Court of A.P., Hyderabad (OUT).

6. 2 CD copies.